

*** HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION Nos.17676 and 24760 of 2014

% 12-11-2014

W.P.No.17676 of 2014

Chillagundla Venkatanarayana, s/o.Thirupataiah(late),
Age: 49 years, Occu: Advocate, R/o. 1-118/2,
Chikkadapally, Hyderabad.
... Petitioner
Vs.

\$ The Government of India, Ministry of Law and Justice,
Department of Legal Affairs, rep.by its Secretary,
Cabinet Secretariat, Raisina Hill, New Delhi and others.

.... Respondents

!Counsel for the petitioners: 1) Sri Satyam Reddy, senior counsel for
petitioner in W.P.No.17676 of 2014
2) Sri M.Rajender Reddy, counsel for
petitioner in W.P.No.24760 of 2014

Counsel for the Respondents: 1) Asst.Solicitor General for
Government of India

2)Sri D.Prakash Reddy, Senior
Counsel for Mrs Nanda, counsel
for the bar Council of India

3) Sri S.Sriram, counsel for
High Court at Hyderabad

4) Sri G.M.Mohiuddin, counsel
for Bar Council of State of Andhra Pradesh

<Gist :

>Head Note:

? Cases referred:

1. (1960) 3 SCR 578: AIR 1960 SC 936
2. (2010) 6 SCC 384
3. (2004) 11 SCC 641
4. (2009) 11 SCC 244
5. 1966 Supp SCR 311

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HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs. 17676 and 24760 OF 2014

COMMON ORDER :

In these two writ petitions the challenge is to the proceedings BCI:D:2942/2014 dated 21.6.2014 of Bar Council of India, directing the Andhra Pradesh Bar Council to continue to exercise power of disciplinary control and to enroll persons belonging to the State of Telangana as advocates. As the issue for consideration in both the writ petitions is the same, both writ petitions are disposed of by common order.

2. Petitioner in W.P.No.17676 of 2014 is a practicing advocate in High Court at Hyderabad, enrolled in the State Bar Council of Andhra Pradesh (undivided) on 19.04.1995 bearing enrolment No.1352 of 1995. Consequent to the formation of State of Telangana, on 16.6.2014 petitioner submitted a representation to the Andhra Pradesh State Bar Council expressing his intention to opt to Telangana Bar Council from that date and requested to transfer his name to the rolls of the Bar Council of Telangana with effect from 16.6.2014 as per Section 34 (2) of Andhra Pradesh Re-organization Act, 2014 (Act 6 of 2014). No reply was given to the petitioner.

3. Petitioner in W.P.No.24760 of 2014 was awarded LL.B. Degree in August, 2014. Petitioner intends to enroll as Advocate on the rolls of Bar Council of State of Telangana and practice as an Advocate in State of Telangana.

4. Andhra Pradesh State Bar Council wrote a letter dated 10.6.2014 seeking guidelines from the Bar Council of India regarding enrolment of law graduates and continuation of proceedings pending before the Disciplinary Committee. The request of the Andhra Pradesh Bar Council was placed before the General House of the Bar Council of India in the meeting held on 17.6.2014 as item No.179 of 2014. The Bar Council of India passed resolution No.117 of 2014. The resolution, *inter alia*, seeks to mandate Andhra Pradesh State Bar Council to continue to exercise the disciplinary jurisdiction as well as enrolment of law graduates as Advocates in the States of Andhra Pradesh and Telangana. It has further mandated to take option from the persons seeking to enroll as advocates to the rolls of State of Telangana or State of Andhra Pradesh as and when bifurcation of Andhra Pradesh State Bar Council takes place and further directed Andhra Pradesh State Bar Council to

maintain two separate registers for two states as per the option given by the candidates. On 21.06.2014, proceedings bearing No.BCI:D:2942/ 2014 was issued by the Bar Council of India communicating the resolution of the Bar Council of India. In these two writ petitions the decisions of Bar Council of India communicated vide proceedings dated 21-06-2014 are challenged.

5. With the consent of learned counsels representing the petitioners, Government of India, Bar Council of India, High Court of Judicature at Hyderabad and Bar Council of State of Andhra Pradesh, these writ petitions are finally disposed of.

6. Heard Sri. Satyam Reddy, senior counsel for petitioner in W.P.No.17676 of 2014, Sri M.Rajender Reddy, counsel for petitioner in W.P.No.24760 of 2014, Assistant Solicitor General for Government of India, Sri D.Prakash Reddy, senior counsel for Mrs Nanda, counsel for the Bar Council of India, Sri S.Sriram, counsel for High Court at Hyderabad and Sri G.M. Mohiuddin, counsel for Bar Council of State of Andhra Pradesh.

7. Learned senior counsel Sri Satyam Reddy contended that the Advocates Act, 1961 mandates to have separated bar council for each of the States mentioned therein. By virtue of Section 34(1) of Andhra Pradesh Reorganization Act, (Act, 6 of 2014), Section 3(1)(a) of Advocates Act, 1961 is amended and Telangana is also added to the said provision. Section 3(1)(a) of Advocates Act has to be read in conjunction with the Section 34(1) and Section 30(1) of Act 6 of 2014. The 'appointed day' is notified by the Government of India as 2nd June, 2014. Thus, consequent to the formation of State of Telangana, there has to be a separate Bar Council to the State of Telangana. He, therefore, contended that the question of having combined Bar Council for the States of Telangana and Andhra Pradesh after 02.06.2014 does not arise and the decision of the Bar Council of India impugned in this writ petition is contrary to the provisions of the Advocates Act, 1961 read with Section 34(1) of the Act 6 of 2014, is without power or jurisdiction.

8. He further contended that if for any reason bar council does not come into existence immediately, Section 58 of the Advocates Act is a special provision dealing with transition period and, therefore, the question of the Andhra Pradesh State Bar Council undertaking the enrolment exercise to the people belonging to the State of Telangana as advocates and regulating their discipline is *ex facie* illegal.

9. It is further contended that the undivided State of Andhra Pradesh brought out A.P. Advocates' Welfare Fund Act, 1987 (Act No.33 of 1987). In accordance with the provisions of the Act 33 of 1987, welfare fund is constituted. The fund is created as a welfare measure to the Advocates. Government of State of Telangana has announced grant of Rs.100 crores for the benefit of advocates of State of Telangana. The grant and its utilization is directly linked to the formation of separate Bar Council for the State of Telangana and unless bar council is formed and entrusted with the responsibility of administering the welfare fund, grave prejudice would be caused to the entire advocate fraternity of the State of Telangana and to the petitioner in particular. There is every possibility of petitioner not getting any benefit from the fund unless separate Bar Council is formed.

10. He further contended that Advocate General of the State is *ex-officio* member of the Bar Council. The Advocate General conducts elections to the Bar Council. Each State has its own Advocate General and for each State Bar Council, concerned State Advocate General is *ex-officio* member. For a Bar Council Governed by Section 3(1)(a) of Advocates Act, there cannot be two *ex-officio* Advocate Generals. Section 3(2)(a) is very specific, that for respective State Bar Councils, Advocate General of that state alone is *ex-officio* member. Whenever the Act contemplates a common Bar Council for more than one state or a state and a union territory, or the composition of *ex-officio* members different from normal principle of one Advocate General becoming *ex-officio* member, special provision is made in Section 3(1) and 3(2) of Advocates Act as evident from sub-Sections (b), (c), (cc), (ccc), (d), (dd) and (e) of Section 3(1) and Section 3(2). If it is the intention of the Indian Parliament that there should be a common Bar Council for both the states of Telangana and Andhra Pradesh, a similar provision could have been made. By not making a special provision and amending Section 3(1)(a) of Advocates Act by adding the word 'Telangana' into the said provision, the Indian Parliament has expressed its intendment clearly and there is no ambiguity whatsoever and thus bar council has come into existence for the State of Telangana from 2.6.2014. He cited the examples of Bar Council of Delhi, (where the Additional Solicitor General of India is made *ex-officio* member of that Bar Council); Bar Council for States of Assam, Nagaland, Meghalaya, Manipur and Tripur, (where the Advocate General of each of the States above mentioned, are *ex-officio* members); Bar Council for States of Punjab and Haryana, (where the Advocate Generals of both States are made *ex-officio* members).

11. Learned counsel Sri Rajender Reddy submitted that Andhra Pradesh State Bar Council belongs to the State of Andhra Pradesh and the said Bar Council cannot enroll a person as an advocate after 02.06.2014. The directions issued by the Bar Council of India are without competence and jurisdiction. Bar Council of India has to act within the provisions of the statute under which it is created and the Advocates Act does not envisage vesting of such power in bar Council of India directing the Bar Council of a State to act as Bar Council of another State unless specific provision is made in Section 3 of the Advocates Act. This is also discernable from the reading of Section 7 of the Act. Relying on the provision contained in Section 25, he contended that application for enrolment can be made by a person for admission as an advocate in the prescribed form in the State Bar Council within whose jurisdiction the applicant proposed to practice. The petitioner proposed to practice in State of Telangana and, therefore, he is entitled to apply to Bar Council of State of Telangana. The present Bar Council belongs to State of Andhra Pradesh and, therefore, it cannot entertain application of the petitioner for enrolment. The present system adopted by Andhra Pradesh State Bar Council and the Bar Council of India would only jeopardized the career prospects of young Law Graduates who seek to enroll as advocates and practice in the State of Telangana as the entire exercise is illegal. Sections 57 and 58 of the Government of India Business Rules, deals with the situation and, therefore, those rules have to be invoked by the Central Government. He submitted that on 23.08.2014, Andhra Pradesh State Bar Council has passed resolution supporting bifurcation. In view of the said resolution, Bar Council of India ought to have withdrawn the circular impugned in the writ petition and ought to have set in motion process for establishment of Bar Council for the State of Telangana and inaction on the part of the Bar Council of India is illegal.

12. Senior counsel Sri D.Prakash Reddy appearing for the Bar Council of India, submitted that Section 2(1)(g) of Advocates Act defines High Court. High Court is the common High Court for the State of Andhra Pradesh and the State of Telangana. He further submitted that Section 48-B of the Advocates Act vests power in the Bar Council of India to give directions and the directions issued by the Bar Council of India impugned in these writ petitions are traceable to the said provision. He further contended that reliefs sought by the petitioners are on the inaction of the Union of India and unless such declaration is granted no further relief can be granted. The relief sought against Bar Council of India is a consequential relief.

13. Learned Senior Counsel Sri D. Prakash Reddy further submitted that only in

Section 30(1) of Act 6 of 2014, a specific mention is made with reference to the 'appointed day'. In no other section in part-IV, the word 'appointed day' is mentioned and in Section 34(1) and in Section 40(1), the relevant date is referable to Section 30(1).

14. He further submitted that as per Section 30(1), from 02.06.2014, High Court of Judicature at Hyderabad has come into existence and this High Court is a common High Court for State of Andhra Pradesh and State of Telangana until a separate High Court is constituted under Article 214 of the Constitution of India for the State of Andhra Pradesh. So far, separate High Court for the State of Andhra Pradesh is not constituted and until and unless separate High Court is constituted for the State of Andhra Pradesh, there cannot be a separate Bar Council for the State of Telangana. By not mentioning the 'appointed day' in Section 34(1), the Parliament has clearly expressed its intention not to have a separate Bar Council till the High Court is constituted for the State of Andhra Pradesh. Otherwise in Section 34(1), the Parliament would have used word 'appointed day' instead of referring to the day to be notified as per Section 30(1).

15. He further submitted that there are two dates mentioned in Section 30(1). The first is referable to the 'appointed day' and second is the date of constitution of separate High Court for the State of Andhra Pradesh. Thus, what is mentioned in Section 34(1) is referable to second date i.e., date of constitution of separate High court for the state of Andhra Pradesh. Otherwise Parliament would have used word 'appointed day' in Section 34(1) instead of day referable to Section 30(1). Several other provisions in Part-IV clearly bring out this distinction and in no other section other than section 30, the words 'appointed day' is used.

As evident from Section 40(1), it also refers to the second limb of the provision in Section 30(1) i.e., the constitution of separate High Court for the State of Andhra Pradesh and only from that date the High Court of Judicature at Hyderabad would not have the jurisdiction over the State of Andhra Pradesh. Here also the date referable to is the date referred in section 30(1) and not appointed day. Thus, as per the language used in Section 34(1) and Section 40(1) of the Act 6 of 2014, it is the clear intendment of Indian Parliament that present Bar Council shall continue to be the Bar Council for both states till a separate High Court is formed for the state of Andhra Pradesh.

16. He further contended that the introduction of the word 'Telangana' in Section 3(1)(a) of Advocates' Act would come into force only from the date of constitution of

High Court for the State of Andhra Pradesh.

Any other interpretation would offend the language of Act 6 of 2014.

He, therefore, submitted that Section 58 of the Advocates Act, is not attracted as no separate Bar Council comes into existence till separate High Court is constituted for the State of Andhra Pradesh and when Andhra Pradesh State Bar Council is entrusted with the responsibility to enforce the provisions of Advocates' Act, the High Court undertaking the exercise of enrolment of the Advocates belonging to State of Telangana does not arise. In substance, the learned senior counsel would submit that establishment of separate Bar Council for State of Telangana is dependent on establishment of separate High Court for State of Andhra Pradesh.

17. Learned standing counsel appearing for the Andhra Pradesh State Bar Council submitted that Andhra Pradesh Bar Council is following clear instructions issued by the Bar Council of India. From 17.6.2014, the A.P. Bar Council is maintaining separate rolls of the advocates belonging to State of Telangana and State of Andhra Pradesh and Andhra Pradesh Bar Council continues to exercise disciplinary jurisdiction on advocates belonging to State of Telangana and State of Andhra Pradesh. After constitution of High Court for the State of Andhra Pradesh, Bar Council for State of Telangana would come into force and, thereafter as per provisions envisaged in Part-IV of Act 6 of 2014, the options would be taken from the existing advocates. Similarly, the AP State Bar council shall continue to enroll new advocates belonging to both states till separate Bar Council is established for the State of Telangana. However, the State Bar Council shall maintain two separate registers for two states as directed by the Bar Council of India. As of now, the grievance agitated by the petitioners is not valid and no relief can be granted as sought by the petitioners.

18. Learned standing counsel for High Court of Judicature at Hyderabad Sri Sriram circulated copy of the written instructions dated 01.07.2014 furnished by the Registrar General of High Court of Judicature at Hyderabad. The stand of the High Court is, since High Court is not informed of non- functioning of Bar Council, the question of applying provisions of Section 58 would not arise.

19. The point that arises for consideration in these two writ petitions is whether Bar Council of India is competent to vest jurisdiction in the Andhra Pradesh State Bar Council to exercise jurisdiction over State of Telangana with reference to enrollment of persons as Advocates and disciplinary control over advocates belonging to State

of Telangana?

20. It is appropriate to notice the statutory framework relevant for the issue under consideration as debated by learned counsels.

21. The relevant provisions of the Advocates Act, 1961 are Sections

2 (1) (m), 3(1)(a), (b), (c), (cc), (ccc), (d), (dd), (e), Section 3(2)(a), Section 6(1)(d), (dd), 2 (a), 17, 25, 48B, 53, 54, 58 (1) and (2):

“2. Definitions : (1) In this Act, unless the context otherwise requires:

.....

(m) “State Bar Council” means a Bar Council constituted under section 3”

3. State Bar Councils.—

(1) There shall be a Bar Council—

(a) for each of States of Andhra Pradesh, Bihar, Gujarat, Jammu and Kashmir, Madhya Pradesh, Karnataka, Orissa, Rajasthan and Uttar Pradesh to be known as the Bar Council of that State;

(b) for the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura to be known as the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh;

(c) for the State of Kerala and (the Union territory of Lakshadweep), to be known as the Bar Council of Kerala;

(cc) for the (State of Tamil Nadu) and the Union territory of Pondicherry to be known as the Bar Council of Madras;

(ccc) for the States of Maharashtra and Goa, and the Union territories of Dadra and Nagar Haveli and Daman and Diu, to be known as the Bar Council of Maharashtra and Goa;

(d) for the States of Punjab and Haryana, and the Union territory of Chandigarh, to be known as the Bar Council of Punjab and Haryana;

(dd) for the State of Himachal Pradesh, to be known as the Bar Council of Himachal Pradesh;

(e) for the State of West Bengal and the (Union territory of Andaman and Nicobar Islands) to be known as the Bar council of West Bengal;

Section 3(2)(a) : State Bar Council shall consist of the following members, namely;-

(a) in the case of the State Bar Council of Delhi, the Additional Solicitor General of India is *ex officio* (in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate General of each of the State of Assam, Manipur, Meghalaya, Nagaland and Tripura, *ex officio*; in the case of the State Bar Council of Punjab and Haryana, the Advocate-General of each of the State of Punjab and Haryana, *ex officio*;) and in the case of any other State Bar Council, the Advocate-General of the State, *ex officio*;

6. Functions of State Bar Councils :

(1) The functions of a State Bar Council shall be --

(d) to safeguard the rights, privileges and interests of advocates on its roll;

(dd) to promote the growth of bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of section 7.

.....

(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of –

(a) giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates;

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17. State Bar Councils to maintain roll of advocates.—

(1) Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of—

(a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), immediately before the appointed day 3[including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time] express an intention in the prescribed manner to practise within the jurisdiction of the Bar Council;

(b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed day.

(2) Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

(3) Entries in each part of the roll of advocates prepared and maintained by a State Bar Council under this section shall be in the order of seniority, 1[and, subject to any rule that may be made by the Bar Council of India in this behalf, such seniority shall be determined] as follows:—

(a) the seniority of an advocate referred to in clause (a) subsection (1) shall be determined in accordance with his date of enrolment under the Indian Bar Councils Act, 1926 (38 of 1926);

(b) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day shall, for the purposes of the first part of the State roll, be determined in accordance with such principles as the Bar Council of India may specify;

(d) the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall be determined by the date of such enrolment or admission, as the case may be;

(e) notwithstanding anything contained in clause (a), the seniority of an attorney enrolled [whether before or after the commencement of the Advocate (Amendment) Act, 1980] as an advocate shall be determined in accordance with the date of his enrolment as an attorney.]

(4) No person shall be enrolled as an advocate on the roll of more than one State Bar Council.

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25. Authority to whom applications for enrolment may be made.— An application for admission as an advocate shall be made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposes to practise.

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48B. Power to give directions. –

(1) For the proper and efficient discharge of the functions of a State Bar Council or any Committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any committee thereof as may appear to it to be necessary, and the State Bar Council or the committee shall comply with, such directions.

(2) Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions to the ex officio member thereof as may appear to it to be necessary, and such directions shall have effect notwithstanding anything contained in the rules made by the State Bar Council.

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53. Elections to first State Bar Council.—Notwithstanding anything contained in this Act, the elected members of a State Bar Council, constituted for the first time under this Act, shall be elected by and from amongst advocates, vakils, pleaders and attorneys who, on the date of the election, are entitled as of right to practise in the High Court and are ordinarily practising within the territory for which the Bar Council is to be constituted.
Explanation.—Where the territory for which the Bar Council is to be constituted includes a Union territory, the expression “High Court” shall include the Court of the Judicial Commissioner of that Union territory.

54. Term of office of members of first State Bar Council.—Notwithstanding anything contained in this Act, the term of office of the elected members of a State Bar Council constituted for the first time, shall be two years from the date of the first meeting of the Council:
[Provided that such members shall continue to hold office until the State Bar Council is reconstituted in accordance with the provisions of this Act.]

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58. Special provisions during the transitional period.—

(1) Where a State Bar Council has not been constituted under this Act or where a State Bar Council so constituted is unable to perform its functions by reason of any order

of a court or otherwise, the functions of the Bar Council or any Committee thereof, insofar as they relate to the admission and enrolment of advocates, shall be performed by the High Court in accordance with the provisions of this Act.

(2) Until Chapter IV comes into force, a State Bar Council or a High Court performing the functions of a State Bar Council may enroll any person to be an advocate on a State roll, if he is qualified to be so enrolled under this Act, notwithstanding that no rules have been made under section 28 or that the rules so made have not been approved by the Bar Council of India, and every person so enrolled shall, until that Chapter comes into force, be entitled to all the rights of practice conferred on an advocate under section 14 of the Indian Bar Councils Act, 1926 (38 of 1926).

22. The relevant provisions of the Andhra Pradesh Reorganization Act, 2014 (Act 6 of 2014) are: Sections 2(a), 30, 31 (1), 34 (1), (2):

2. In this Act, unless the context otherwise requires:-

(a) “appointed day” means the day which the Central Government may, by notification in the Official Gazettee, appoint;

30. (1) On and from the appointed day:-

(a) the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with section 31 of this Act.

(b) the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh Holding office immediately before the appointed day shall become on that day the Judges of the common High Court.

(2) the expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the States of Andhra Pradesh and Telangana on the basis of population ratio.

31.(1) Subject to the provisions of Section 30, there shall be a separate High Court for the State of Andhra Pradesh (hereinafter referred to as the High Court of Andhra Pradesh) and the High Court of Judicature at Hyderabad shall become the High Court for the State of Telangana (hereinafter referred to as the High Court at Hyderabad).

34. (1) On and from the date referred to in sub-section (1) of section 30, in the Advocates Act, 1961, in section 3, in sub-section (1), in clause (a), for the words “Rajasthan, Uttar Pradesh”, the words “Rajasthan, Telangana, Uttar Pradesh” shall be substituted.

(2) Any person who immediately before the date referred to in sub-section (1) of section 30 is an advocate on the roll of the Bar Council of the existing State of Andhra Pradesh and practicing as an advocate in the High Court at Hyderabad, may give his option in writing, within one year from that date to the Bar Council of such existing State, to transfer his name on the roll of the Bar Council of Telangana and notwithstanding anything contained in the Advocates Act, 1961 and the rules made thereunder, on such options so given his name shall be deemed to have been transferred on the roll of the Bar Council of Telangana with effect from the date of the option so given for the purpose of the said Act, and the rules made thereunder.

23. Prior to Advocates Act, Legal Practitioners Act, 1879, Bombay Pleaders Act, 1920 and Indian Bar Council Act, 1926 were governing the enrollment of advocates.

Legal Practitioners Act, 1879 vested power in High Court, District Judge, Senior Judge, District Magistrate, Presidency Magistrate, Chief Judge of Presidency Small Causes Court, Revenue Officer to frame and publish list of persons to act as touts. The Bombay Pleaders Act, 1920 envisaged two classes of Pleaders, i.e., Pleaders practicing in Bombay High court as one class and in District Courts and Courts subordinate thereto as another class. The High Court of Bombay was vested power to enroll a Pleader and to specify where he can practice. Section 53 of States Reorganization Act, 1956 and Section 31 of Bombay Reorganization Act, 1960 vested powers in the concerned High Courts to enroll Advocates and regulate their conduct. The Bar Councils Act, 1926 constituted a Bar Council to each of the High Courts. The enactments vested power in the High Court to enroll a person as advocate. In super session of all the above enactments, the Advocates Act, 1961 is promulgated.

24. The statement of objects and reasons to bring about this Act are, common roll of Advocates and right to practice in any part of the country and in any Court; the integration of the Bar into a single class of legal practitioners; and creation of an autonomous Bar Councils, one for whole of India and one for each of the States. The Act dispenses roll of the High Courts or other Courts to enroll persons as advocates and vests exclusively in the State Bar Council. It provides for a separate State Bar Council to every State with some exceptions as specially incorporated in Section 3(1)(b) to (e).

25. As per definition contained in Section 2(1)(m) of the Advocates Act, 'State Bar Council' means a Bar Council constituted under Section 3 of the Advocates Act. Section 3 provides for Bar Council for each of the States mentioned therein under sub section 1(a) and wherever the Act intended to have one Bar Council to more than one State or a State and Union territory/ territories, specific provision is made in clauses (b) to (e) of Section 3(1). As per Section 2(n), 'State roll' means roll of Advocates prepared and maintained by the State Bar Council under Section 17.

26. Section 17 envisages preparation and maintenance of roll of advocates by the respective State Bar Councils. Under Section 25, a person should apply for admission as an advocate to the State Bar Council. Section 6 of the Advocate's Act prescribed the functions of State Bar Councils. In accordance with the provisions of Advocates Act, in each State one roll of advocates has to be maintained. Enrollments of advocates is in concerned state where a person belongs to or ordinarily resides and intend to practice and such enrollment has to be carried out by

the Bar Council of that state. The State Bar Council is vested with power to enroll persons as advocates and regulate the conduct of Advocates on its rolls. Sections 3, 6, 17, 18, 22, 25, 26A and Chapter V clearly point out that the role of enforcement of the provisions of the Advocates Act is assigned to the State Bar Council. It would thus mean each state must have Bar Council, whether combined or separate but as specifically provided in Section 3(1) of the Advocates Act.

27. Bar Council of India consists of the Attorney General of India, the Solicitor General of India and one representative from each State Bar Council as members. Section 7 of the Advocates Act prescribes functions of the Bar Council of India. In Section 7(1)(g), power of general superintendence and control is vested in Bar Council of India over the State Bar Councils. Section 48B vests power in the Bar Council of India to give directions to State Bar Councils '*for proper and efficient discharge of the functions of the State Bar Council*'.

28. The scheme of the Act would bring out that ordinarily each of the States shall have a bar council. Wherever a departure is needed, specific provision is incorporated in Section 3 of the Act. The Union Territories are not provided with separate bar councils. They are attached to nearby State bar council. Thus, for the seven north-east states one bar council is provided known as bar council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh (Section 3(1)(b)); for States of Punjab and Haryana one bar council is provided known as bar council of Punjab and Haryana (Section 3(1)(d)); for the States of Maharashtra and Goa one bar council provided known as Bar council of Maharashtra and Goa and the Union Territories of Dadra and Nagar Haveli and Daman and Diu are also attached (Section 3(1)(ccc)). The Union Territory of Lakshadweep is attached to bar council for the State of Kerala (Section 3(1)(c)). The Union Territory of Pondichery is attached to bar council of State of

Tamil Nadu (Section 3(1)(cc)). The Union Territory of Andaman and Nicobar is attached to bar council of State of West Bengal

(Section 3(1)(e)). The Union Territory of Chandigarh is attached to bar council of States of Punjab and Haryana (Section 3(1)(d)). For all other States, each State has a separate Bar Council. When new states of Chattisgarh, Jharkand and Uttaranchal are created, Section 3(1)(a) was amended providing Bar Councils to respective states.

29. Advocates Act assigns important role to the Attorney General of India, the Solicitor General of India, the Additional Solicitor Generals and the Advocate

Generals of the States. The Attorney General of India and the Solicitor General of India are ex-officio members of the Bar Council of India. For the State Bar council of Delhi, the Additional Solicitor General is the ex-officio member. For all other state Bar Councils respective Advocate Generals are ex-officio members. Wherever, a State Bar Council is established for more than one State, Advocate General of each of the states is made ex-officio member of such combined Bar Council.

30. As per Sections 3 and 4 of Act 6 of 2014, on and from the appointed day, a new State known as State of Telangana comes into existence comprising of territories mentioned therein. From the said appointed date, the territories mentioned therein shall cease to form part of the erstwhile State of Andhra Pradesh. As per Section 10 of Act 6 of 2014, First Schedule to the Constitution is amended and new entry i.e., entry 29 including State of Telangana is added. Simultaneously, the territorial jurisdiction of the State of Andhra Pradesh is also amended excluding the Districts which have now become part of State of Telangana. Section 2(a) of Act 6 of 2014, defines 'appointed day', which would mean, the day on which the Central Government may, by notification in the official gazette, appoint, in exercise of the powers vested in Section 2(a). The Central Government notified 2nd June, 2014 as appointed day. Thus, with effect from 02.06.2014, State of Telangana has come into existence and there are two States i.e., State of Telangana and State of Andhra Pradesh instead of erstwhile State of Andhra Pradesh. Therefore, reference to "Andhra Pradesh" in section 3 (1) (a) of Advocates Act would mean the residuary part of erstwhile State of Andhra Pradesh. By Section 34(1) of Act 6 of 2014, Section 3(1)(a) of Advocates Act is amended introducing 'Telangana'.

31. Before appreciating the rival submissions, it is necessary to parade the precedents on the various parameters of statutory interpretation.

32. As held by Supreme Court **Mahadeolal Kanodia Vs. Administrator-General of W.B.**, one of the principles of interpretation of statutes is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. Further, if the strict grammatical interpretation gives rise to

an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably

be considered to have had will be put on the words, if necessary even by modification of the language used (paragraph 8).

33. As noted by Supreme Court in **Joint Commissioner of Income Tax, Surat v. Saheli Leasing and Industries Limited**, “a particular word occurring in one section of the Act, having a particular object cannot carry the same meaning when used in a different section of the same Act, which is enacted for a different object. In other words, one word occurring in different sections of the Act can have different meanings, if the object of the two sections is different and when both operate in different fields.”

34. In **Swedish Match AB v. SEBI**, Supreme Court held as under:

“86. It is now trite that when an expression is capable of more than one meaning, the court would attempt to resolve that ambiguity in a manner consistent with the purpose of the provisions and with regard to the consequences of the alternative constructions. [See *Clark & Tokeley Ltd. (t/a Spellbrook) v. Oakes* [(1998) 4 All ER 353 : 1999 ICR 276 (CA)]. “

35. In **Binani Zinc Limited v. Kerala State Electricity Board and others**, Supreme Court held as under:

“27. The provisions of the 1998 Act vis-à-vis the 1948 Act are required to be construed harmoniously. For the said purpose it is required to bear in mind that the law does not contemplate a vacuum in its operation. The 1948 Act has not been repealed or

repealed by the 1998 Act. Section 61 merely replaced the ordinance.”

36. Guided by the above principles of statutory interpretation, the issue falling for consideration in these writ petitions is examined.

37. The provision in Section 34(1) is an amendment to Section 3(1) of Advocates Act and word ‘Telangana’ is added in that section. Once such amendment is made, the amended provision becomes part of the parent act and the relevant provisions of parent act have to be construed after duly taking note of the amendments carried out. Advocates Act mandates having a Bar Council to each of the States and the Union Territories, whether independent or combined as incorporated in Section 3(1) of the Act. It would thus mean that from the date of coming into existence of Telangana State, there shall be a Bar Council for the State of Telangana.

38. The object of Advocates Act in creating a State Bar Council is to benefit persons

ordinarily living in a State and/ or intending to practice in courts located in a State. The State Bar Council, enrolls persons as advocates, maintains seniority and regulates their conduct. The Advocate is entitled to benefits of welfare fund and other benefits available as a member of the concerned State Bar Council. It is a beneficial legislation. In accordance with scheme of the Advocates Act, there has to be a Bar Council to State of Telangana. If the amendment to Advocates Act by virtue of Section 34(1) of Act 6 of 2014 should come into effect from the date of establishment of separate High Court for State of Andhra Pradesh, as contended by the learned senior counsel Sri D Prakash Reddy, there would be no Bar Council to the State of Telangana till such establishment as no amendment is made to Section 3(1) and (2) of the Advocates Act other than amendment to Section 3(1)(a) introducing word 'Telangana' and the Andhra Pradesh State Bar Council is not made as a combined Bar Council for both States after the bifurcation. Even assuming that the provision in Section 34(1) of the Act 6 of 2014 is ambiguous and is susceptible to two interpretations, accepting the interpretation of senior counsel for Bar Council of India will not be in a manner consistent with the purposes of the provisions of the Advocates Act, as the consequences of such construction would be having no Bar Council for State of Telangana for an indefinite period.

39. If the intention of the Indian Parliament was to entrust the responsibility of implementing the provisions of the Advocates Act to the existing Andhra Pradesh State Bar Council to the States of Telangana and Andhra Pradesh till a separate High Court is constituted for the State of Andhra Pradesh, a provision to that extent would have been incorporated in Section 3(1) and Section 3(2) of the Advocates Act, similar to the provisions contained in Section 3(1)(b) to (e) and (2) of the Advocates Act. In this regard reference may be made to Section 31(1)(b) of Punjab Reorganisation Act, 1966. By said provision, Bar Council of Punjab is made the Bar Council of Punjab and Haryana states with the Advocates General of two states becoming ex-officio members. Parliament would have made similar provision if it intended to make the existing Bar Council as common Bar Council for two states.

40. If the argument on behalf of the Bar Council of India that a separate Bar Council to State of Telangana comes into being only when

separate High Court is constituted, is accepted, it would mean that there cannot be

any enrolment of new advocates belonging to the State of Telangana until a separate High Court is constituted for the State of Andhra Pradesh as the enrollment by one State Bar Council to a person living in another State and/or intending to practice in that State is not envisaged by the Advocates Act. Such interpretation to the provision in Section 34(1) as sought to be pressed into service on behalf of the Bar Council of India, would cause damage to the language employed in the relevant provisions and to the scheme of the Advocates Act and results in absurd consequences. Indian Parliament did not envisage creation of hiatus.

41. Before formation of state of Telangana, the erstwhile state of Andhra Pradesh was one unit and advocates belonging to the erstwhile State of Andhra Pradesh were entitled to practice in the then High Court of Andhra Pradesh and Courts subordinate to it. With reference to advocates practicing prior to 02.06.2014, appropriate provisions are made in Act 6 of 2014. Section 34(2) deal with advocates practicing in High Court of Andhra Pradesh prior to 02.06.2014 and on 02.06.2014 in High Court of Hyderabad and Section 106 deals with advocates practicing in subordinate Courts. The Act 6 of 2014 is silent with reference to enrolment of persons as advocates in State of Telengana after 01.06.2014. The law does not contemplate a vacuum in its operation. Thus, the Act 6 of 2014 leaves it to the Advocates Act to govern the enrollment procedure.

42. Section 34(1) is a special provision. By virtue of this provision, Advocates Act is amended. Thus, the words occurring in this section have to be seen with reference to parent act. The words 'on and from the date referred' occurring in Section 34(1) of Act 6 of 2014 has to be understood as 'from the appointed day' as mentioned in Section 30(1) and it cannot be compared to similar words used in Section 40(1) of the same act. Provision in Section 40(1) is in connection with establishment of separate High Court for State of Andhra Pradesh. Thus, the object of these two provisions is different and both operate in different fields and therefore shall have different meaning. Same words occurring in different provisions of an Act can have different meaning.

43. It is settled principle of law that when words in a statute are plain and simple and susceptible to one meaning, by way of interpretation no damage can be caused to such meaning. The argument on behalf of Bar Council of India stems from the stand

point to link existence of Bar Council to that of High Court, assumption of a common Bar Council to both states till a separate High Court for State of Andhra Pradesh is constituted and invoking the provisions of Section 48B as if it is a common Bar Council, that is contrary to the intendment of Advocates Act. The decision of the Bar Council of India is in excess of the powers vested by the Advocates Act.

44. In **Barium Chemicals Ltd. v. Company Law Board**, on a review of entire case law on the subject, Supreme Court succinctly put that, “Though an order passed in exercise of power under a statute

cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.” (para 28).

45. Chapter-VII of the Advocate’s Act, 1961, deals with temporary and transitional provisions. Section 53 deals with elections to first State Bar Council. Section 54 deals with the term of office of members of first State Bar Council. The other provisions deal with other contingencies arising out of constitution of new bar council for the State. According to Section 58, if State Bar Council is not constituted, or constituted but unable to perform its functions, the function of the Bar Council insofar as it relates to admission and enrolment of advocates, should be performed by the High Court. Thus, the Act takes care of the transitional period after formation of a State Bar Council. The rights and privileges of advocates have also been incorporated in this chapter. This chapter also envisages special provisions concerning some states or union territories, wherever the Parliament deemed it necessary. No such special provision is made insofar as the State of Telangana is concerned.

46. The Bar Council of India traces its power to give directions to State Bar Councils

to Sections 7 and 48-B of the Advocates Act. The said provisions have to be read in consonance with all other provisions of the Advocates Act. Bar Council of India being a creature of Advocates Act has to work within four corners of the said enactment. A reading of the provisions of the Advocates Act, it is clear that no delegation is conferred on the Bar Council of India either expressly or impliedly to authorize the Andhra Pradesh State Bar Council also to act as Bar Council for the State of Telangana. As per the scheme of the Advocates Act, no such implied power on Bar Council of India can be inferred. Advocates Act does not envisage extra territorial jurisdiction to any State Bar Council and in the absence of conferment of extra-territorial jurisdiction on any State Bar Council, Bar Council of India cannot confer such extra territorial jurisdiction to any State Bar Council. The decisions impugned amount to conferring extra territorial jurisdiction on Andhra Pradesh State Bar Council, which is the Bar Council for the State of Andhra Pradesh, to the State of Telangana also. It is without power and competence and contrary to the scheme of the Advocates Act.

47. The Advocates Act is a self contained enactment dealing with all aspects of an Advocate. The full gamut of provisions of Advocates Act shall apply in State of Telangana.

48. For the reasons afore stated, the decision of Bar Council of India communicated vide BCI:D:2942/2014 dated 21.6.2014 held illegal, without power and jurisdiction and the writ petitions are allowed. Consequently, Bar Council of India and Central Government are directed to take immediate steps to ensure that the State Bar Council for State of Telangana becomes operational. No costs. Miscellaneous petitions if any pending in these writ petitions shall stand closed.

_____**JUSTICE P.NAVEEN RAO**

Date: 12.11.2014

Kkm/tvk

Note : L R Copy to be marked – Yes

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.17676 AND 24760 OF 2014

DATE : 12.11.2014

Kkm